

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4987 of 1990  
with  
SPECIAL CIVIL APPLICATION NO. 4068 OF 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL  
and  
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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SUGRABIBI WIDOW OF MOHMADBHAI KADARBHAI LAKHDAWALA

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 4987 of 1990  
MR BH CHHATRAPATI for Petitioner No. 1-3  
GOVERNMENT PLEADER for Respondent No. 1-2  
MR PRASHANT G DESAI for Respondent No. 3

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CORAM : MR.JUSTICE B.C.PATEL  
and  
MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/08/2001

1. The present application is preferred by the petitioners praying to quash and set aside the notification dated 5.2.88 issued under Sec. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) at Annexure 'D' and notification dated 4.2.89 issued under Sec. 6 of the Act vide Annexure 'F' and notice dated 5.5.89 issued under Sec. 9 of the Act at Annexure 'G' to the petition. By the notification, it was clear that the land was required for public purpose specified in the schedule. The land in question is situated at Surat (Randher area) admeasuring about 368.08 sq.mtrs. The purpose for which the land was required is mentioned in column 4 of the schedule as "open space for Surat". After following the procedure laid down in the Act, notification under Sec. 6 was issued and thereafter notice under Sec. 9. Notification issued under Sec. 4 & 6 of the Act were not challenged soon after their issuance but after the proceedings were completed, the petitioner approached the court at a belated stage.

2. The learned advocate Mr.Chhatrapati appearing for the petitioners stated that the land was not at all needed for public purpose and the purpose mentioned in the notification is vague. He further submitted that on the basis of such vague notification, the lands cannot be acquired as that would not give an opportunity to the claimants to make proper representations. Mr. Chhatrapati placed strong reliance on the decision of the Apex Court in case of Munshi Singh and others V/S Union of India reported in AIR 1973 S.C. 1150 in which the Court pointed out that the person interested in the land proposed to be acquired must have an opportunity to submit his objections and that he can do only if the notification while mentioning the public purpose gives some definite indication or particulars of the said purpose which would enable the persons concerned to object effectively. In the case before the Apex Court, the notifications merely mentioned that the land was needed for "planned development of the area" and there was no proof that the interested persons were either aware of or were shown the scheme or the master plan in respect of the planned development. Under the circumstances, the Apex Court held that the persons were unable to object effectively and therefore the acquisition proceedings were held liable to be quashed. Para 8 of the said judgments reads as under :

"As already noticed in the notifications under s.

4 all that was stated was that the land was required for "planned development of the area". There was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible for any one interested in the land sought to be acquired to find out what kind of planned development was under contemplation i.e. whether the land would be acquired and the development made by the Government or whether the owners of properties would be required to develop a particular area in a specified way. If the Master Plan which came to be sanctioned on September 4, 1962 had been available for inspection by the persons interested in filing objections or even if the knowledge of its existence on the part of the appellants had been satisfactorily proved the position may have been different. In that situation the appellants could not claim that they were unable to file objections owing to the lack of any indication in the notification under s. 4 of the nature of development for which the area was being requisitioned. On behalf of the State it has been pointed out that the appellants had themselves filed a copy of the Master Plan which was sanctioned on September 4, 1962 and that it was a matter of common knowledge that the Master Plan was under preparation. The details relating to the Master Plan and the Plan itself had been published in the local newspapers and the appellants could have easily discovered what the proposed scheme was with regard to the development of the area in which they were interested. In view of the peculiar circumstances of these cases we gave an opportunity to the State to apply for amendment of its return since nothing had been said about these matters therein and to produce additional evidence in support of its allegations. Such a petition was filed and certain documents were sought to be placed on the record. After a careful consideration of the petition for amendment and the evidence sought to be adduced we dismissed the prayer for amendment as well as for production of additional evidence as we were not satisfied that the documents sought to be produced were either relevant or were required to enable this Court to pronounce judgment."

Mr. Chhatrapati submitted that in the case before the Apex Court, there was no indication with regard to the

development and its nature whether it was required for residential, commercial or industrial. In the instant case, there is no dispute that the lands were sought to be acquired under the Land Acquisition Act in view of the reservation in the development plan. Sec.12 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the Development Act) is required to be considered. The said section reads as under :

" A draft development plan shall generally indicate the manner in which the use of land in the area covered by it shall be regulated and also indicate the manner in which the development therein shall be carried out."

Reading several clauses, it is clear that care is taken wherever it is required to be specifically indicated the purpose of reservation or the purpose for which the land reserved is to be used. viz. residential, industrial, commercial, agricultural and recreational purpose. The purpose of reservation is also indicated in clause 'B' of Sub-sec. 2 of Sec. 12 which specifically refers "open space". Sub-clause 'm' of Sub-Sec. 2 of Sec. 12 also refers to the provision for controlling and regulating the use and development of land within the development area including imposition of conditions and restrictions in regard to open space to be maintained for buildings, the percentage of building area etc.

3. Mr.Desai, L.A. appearing for the respondent submitted that in a Town Planning Scheme when the land is earmarked for open space, it is obviously for public purpose for the purpose of maintaining ecology and hygienic environment. Even the land so reserved or earmarked cannot be used for other purpose. In case of Virender Gaur and others V/S State of Haryana and others reported in (1995)2 S.C.C. 577 the question was examined by the Apex court as to whether there is power to lease or deal with the property when it is required to be kept as an open land. The Apex Court pointed out that :

"the land is vested in the Municipality and the Government has no right and title or interest therein. They have no power to give either by lease to Punjab Samaj Sabha or deal with the property as if the land vested in it. Therefore, the grant of lease by the Government in favour of the Punjab Samaj Sabha was clearly without authority of law and jurisdiction." The court, further pointed out that "the open lands, vested in the Municipality, were meant for the public

amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme. It is not possible to accept the contention that for non-user of open land by the Municipality for more than two decades, the land stood divested from the Municipality and vested in them. Yet the Municipality has to use the land for the purposes envisaged in the scheme read with those found in Sec. 61 unless unavoidable compelling public purpose require change of user. Acceptance of the argument encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fait accompli.

The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contravention or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the

man-made and the natural environment. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment."

Yet there is another decision of the Apex Court in case of Bangalore Medical Trust V/S B.S.Muddappa and others reported in (1991)4 S.C.C. 54 in which it was held that open space reserved for public park in development scheme duly approved and published under the Act cannot be converted into a civic amenity site for the purpose of hospital/nursing home. Open space as well as hospital/nursing home are public purposes but when it is possible to change one purpose to another public purpose and when it is not possible is pointed out in paras 23,24 & 25 as under :

23. The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the city of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and playgrounds with a view to protecting the residents from the ill-effects of urbanization. It meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, 'ventilation' and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting Sec. 16(1)(d), 38-A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the city of Bangalore and the areas adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.

24. Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by

the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.

25. Reservation of open spaces for parks and playgrounds is universally recognized as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanization."

The court also considered the decisions delivered by the Supreme of the United States which upheld a zoning ordinance which provided "...it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as ....pollution.... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related to geology, fire and flood, and other demonstrated consequences of urban sprawl." Upholding the ordinance, the Supreme Court of the United States pointed out that the zonic ordinances benefit the appellants as well as the public by serving the city's interest in assuring careful and orderly development of residential property with provision of open space areas." In view of what we have discussed herein above, it is clear that "open space" is a public purpose and it is not necessary to indicate by using any further adjectives for the purpose for which it is required to be kept open. In space which is required to be kept open, no construction is to be carried out for maintaining ecological balance as indicated by the Apex Court herein above.

4. In view of the scheme of the Development Act, once the State Government has sanctioned the draft development plan, it has the effect of the law as if the law is made by the Legislature. Sec. 17(1) (d) of the Development Act reads as under :

" The sanction accorded under clause (a), clause (b) or clause (c) shall be notified by the State

Government in the Official Gazette and the draft development plan together with the regulations so sanctioned shall be called the final development plan."

In view of this for the purpose for which the land is designated in the plan, as specified in clause (b), clause (c), clause(f), clause (k), clause (h) or clause (o) of Sub-sec. 2 of Sec. 12 may be acquired. The lands may be acquired either by an agreement or under the provisions of the Land Acquisition Act, 1894 and if the lands are not acquired as indicated in Sec. 20(1) of the Act, the consequences would follow as indicated in the sub-sec. (2) of Sec. 20.

5. It was submitted that as the land in question was designated as open space in the draft development plan, it was the bounden duty of the local authority in the instant case to initiate the acquisition proceedings under sec. 20 of the Development Act and therefore the proceedings were initiated under the Land Acquisition Act by issuance of notification under Sec. 4 & 6 and following the procedure. It was further submitted that even award has been made in the instant case.

6. Mr.Desai, L.A. for the respondents submitted that in view of the award made by the Land Acquisition Officer, a sum of Rs. 1,44,154/- has been paid by the Special Land Acquisition Officer, Surat. He further submitted that the amount was paid on 24.11.95. For this purpose, he has placed on record the xerox copy of the proceedings. The possession is also handed over to the acquiring authority on 16.11.95. The L.A. for the petitioner Mr. Chhatrapati has shown his ignorance about this as his client has not communicated this information to him.

7. Mr.Chhatrapati, L.A. submitted that in the instant case there was an interim order passed by the court and therefore it was absolutely improper on the part of the respondents to take the possession of the land. In view of this argument, we perused the order made by the Division Bench earlier and we requested Mr. Chhatrapati to point out whether any undertaking has been filed as directed by the court or not ? Mr.Chhatrapati read out the copy of the undertaking which he had and the original of which is on the record of the case. After reading the statement in the order, he conceded before us that it is not an undertaking in the manner the court has directed the petitioners to file. Only existing position was mentioned in a statement, but with regard to the other important condition, no statement on oath has been

filed. The court directed the petitioners to file a statement on oath indicating the position of the land as on the date of making the statement and also state that the petitioners shall maintain status-quo till the hearing and final disposal of the petition. The court further made it clear that if the statement and undertaking are not filed on or before October, 30, 1991, the interim relief granted shall stand automatically vacated. Mr.Desai, L.A. submits that no undertaking was given but on the contrary by accepting the amount of compensation, the petitioners have voluntarily given the possession and the only remedy for the petitioners is to approach the Reference Court, if at all entitled under the law.

8. To countenance the submission made by Mr. Chhatrapati, Mr.Desai L.A. for the respondents has placed reliance on the decision of the Apex Court in case of Her Highness Maharani Shantidevi P Gaikwad V/S Savjibhai Haribhai Patel and others reported in (2001)5 S.C.C. 101 drew our attention to paras 30 & 41 :

" 30. If the position had rested in terms of what has been stated above, the consequences may have been different. It was, however, not so. Under the aforesaid Gujarat Act, on 17-5-1979, draft development plan under Section 13 was published wherein the suit land was designated as "open space, sport stadium, bus terminus and court". During the pendency of the suit, on 25.1.84, the final development plan prepared by the Vadodara Urban Development Authority issued under the Gujarat Act came into effect. As per the said final development plan, the land in question is reserved for open space etc. as stated in draft development plan dated 17.5.79.

41. In the present case, in the draft development plan of 1979 which was finalized during the pendency of the suit, the land in question is reserved for open space etc. It cannot be doubted that the agreement had been entered into between the parties mainly and rather only with the object of construction of residential houses under the Scheme under Section 21 of the ULC Act for accommodation of weaker sections of the society. In May 1979, it became evident that it will not be possible to construct residential houses in view of what was provided in the master plan. There is no substance in the contention that assuming the prescribed land use

is "open space", still there will be no impediment in the implementation of the Scheme in as much as there is no absolute bar for construction of residential houses. This is not the basis on which the competent authority had considered the matter. The agreement is clearly incapable of being specifically enforced. Under these circumstances, there is no question of any inconsistency and thus Section 42 of the ULC Act cannot have any applicability."

Relying on the aforesaid paras, Mr.Desai submitted that under the development plan, it becomes necessary for the authority while submitting the plans to see that some open space is provided and it is for this purpose before the draft development plan became final, opportunities were given and it was for the petitioner to raise objection at that time. But once, irrespective of objections raised or not, if the plan has become final then it is required to be implemented and operated as such, unless there are subsequent changes in the plan.

9. Mr.Chhatrapati submitted that in view of Apex Court Judgment in case of Munshi Singh and others (supra), notification must clearly spell out the purpose. He submitted that mere mentioning "open space" is not sufficient. This contention cannot be accepted for the simple reason of requirement of keeping space as open space". So far as "planned development of the area" as words used in a notification under sec. 4 of the Act, the Apex Court pointed out that in absence of nature of development i.e. whether development was to be of residential and building sites or of commercial and industrial plots, was not specifically stated and thus nature of development for which the area was requisitioned was not clear. In the instant case, there is no question of any vague statement as the space is required to be kept as open space only.

10. Mr. Chhatrapati, L.A. submitted that the petitioner is a poor person and will suffer irreparable loss. In the instant case, amount of compensation has been paid to him and if not satisfied with the amount awarded, the provision is made in the Act to approach the authority for making a Reference. Once we come to the conclusion that the notifications under Sec. 4 & 6 which were issued for open space and that too as required in the development plan, it cannot be said that it is not for public purpose. If the land is to be kept open, there is no question of indicating as to whether it is to be kept open for garden or for parking or for future construction because it is to be kept as "open space".

For garden etc. there are other provisions in sec. 17 of the Development Act. In view of what is stated hereinabove, in the instant case, we are satisfied that after following the procedure, award has been made. The petitioner has come to the court at a belated stage and there is no substance that the land cannot be acquired for open space. Hence, the petition stands dismissed. Rule is discharged. Interim relief is vacated. No order as to costs.

( B.C.PATEL, J )

( SHARAD D DAVE, J )

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